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No. 97-1832

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG, *et al.*,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

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APP

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The first issue presented by this Petition is as follows:

> Are labor unions covered by the National Labor Relations Act required to provide nonmembers with financial statements that are audited by an independent certified public accountant, to explain and justify the amount of the agency fee; or, may they provide nonmembers with only unaudited statements prepared by union members in good standing, who are also paid employees of the union?

As pointed out in the Petition at 10-16, there is a clear conflict among the circuits on this issue. *Compare IAM v. NLRB*, 133 F.3d 1012, 1016-18 (7th Cir. 1998) (reprinted at Petitioners' Appendix ("Pet. App.") 1a), *with Ferriso v. NLRB*, 125 F.3d 865, 867-72 (D.C. Cir. 1997). Although the National Labor Relations Board ("Board") does not dispute the existence of this conflict, Opposition to the Petition ("Opp.") at 20, it nevertheless opposes the granting of the writ on this issue.

Among the reasons for its opposition, the Board claims that review by this Court would be "premature" because:

> the Board currently is reconsidering its position in light of the conflicting decisions. See *Teamsters Local 443 (Connecticut Limousine Service, Inc.)*, 324 N.L.R.B. No. 105 (1997) and *Laborers' Local Union No. 1168 (Work Services Corp.)*, No. 16-CB-4316 (unpublished order dated Apr. 20, 1998), reproduced at App., infra, 10a-11a.

Opp. 21-22 & n.11.

However, the Board has failed to notify the Court that both of these cases, *Teamsters Local 443 (Connecticut Limousine Service, Inc.)*, 324 N.L.R.B. No. 105 (1997) and *Laborers' Local Union No. 1168 (Work Services Corp.)*, No. 16-CB-4316, have settled after remand to the administrative law judges. Thus, in neither of these two cases will the Board be "reconsidering its position in light of the conflicting decisions."

Petitioners believe that the Board had a duty to file a supplemental brief informing the Court of this change in circumstances, since it may affect the Court's consideration of the Petition. *See* Stern, Gressman, Shapiro & Geller, *Supreme Court Practice* 377 (7th ed. 1993). Because the Board has not brought this information to the Court's attention, Petitioners feel compelled to do so. Petitioners did not become aware of these facts until after their Reply Brief was filed.

As noted in Petitioners' Reply Brief at 5-6, the Board has before it other cases that raise this issue. See, *e.g*, *Teamsters Local 166 (Dyncorp Support Services Operations)*, Case Nos. 31-CB-8333, 31-CB-8683 & 31-CB-8938, and *Television Artists-AFTRA (KGW Radio)*, Case No. 36-CB-1491. However, unlike the two now-settled cases in which the Board claimed it was "reconsidering its position," the Board has never identified these latter cases as "lead" cases, or even given any indication that they are under active consideration.

To the contrary, *Television Artists-AFTRA (KGW Radio)* has been pending on exceptions before the Board for over six years, and a Petition for a Writ of Mandamus was recently filed in the United States Court of Appeals for the District of Columbia Circuit to attempt to force a decision to issue. *In re Peter Weissbach*, Case No. 98-1301 (filed July 2, 1998); *see also* "*D.C. Circuit Orders Response to Petition Seeking NLRB Decision in Six-Year Old Case*," Daily Lab. Rep. at A-6 (Aug. 27, 1998). In its Opposition to the Petition for a Writ of Mandamus, the Board indicated that *Television Artists-AFTRA (KGW Radio)* is not one of its lead cases.

CONCLUSION

The two cases in which the Board claimed that it was "reconsidering its position" are no longer pending, and it appears as though the Board is as far from "reconsidering" the issue as ever. Employees across the country should not have to wait even more years (or decades) before the Board "reconsiders its position." The Court should grant the Petition in its entirety and schedule this case for full briefing and argument.

Respectfully submitted,

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